(2016) 03 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Cross No. 228 Of 2008, Excise Appeal No. 2994 Of 2007

C.C.E., Indore APPELLANT

Vs

M/s. Vertex Technosoft Ltd RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

State Financial Corporation Act, 1951 — Section 29
Central Excise Act, 1944 — Section 11, 11D
Central Excise Rules, 1944 — Rule 230
Customs Act, 1962 — Section 142
Finance Act, 2004 — Section 80

Citation : (2016) 03 CESTAT CK 0001

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : G.R.Singh

Final Decision : Dismissed

Judgement

1. Brief facts of the case, leading to this appeal are as follows:

1.1 The Respondent had entered into an agreement with the Madhya Pradesh State Industrial Development Corporation (hereinafter referred to as

â??MPSIDCâ??) for purchase of Land, Building, Plant and Machinery of a unit namely, M/s AEC Enterprises Ltd. Pithampur (hereinafter referred

to AECEL), who defaulted in payment of debts of MPSIDC. Thus, in exercise of statutory powers under Section 29 of the State Financial

Corporation Act, 1951, MPSIDC took over possession of the mortgaged and hypothecated fixed assets of the said AECEL. Thereafter, MPSIDC in

pursuance of order passed by the Debt Recovery Tribunal (DRT) dated 17.09.2003 agreed to sell the assets to the Respondent. Later on, MPSIDC

handed over the possession of the assets of AECEL to the Respondent vide

Superdginama dated 12.11.2003 by executing Sale Deed dated

22.03.2004, which was registered on 15.04.2004.

1.2 The Adjudicating Authority informed the Respondent on 23.11.2004 that a recovery of Central Excise Duty of Rs.15,74,973/- and a penalty of

Rs.1,85,000/- was due from AECEL, whose belongings were purchased by the Respondent and drew attention of the Respondent towards Section 11

of the Central Excise Act, 1944 (hereinafter referred to as â??the Actâ??). Subsequently, the Adjudicating Authority issued a Detention Order under

Section 11 of the Act and detained the finished goods, i.e. Acrylic Mink Blankets worth Rs.17,90,850/-, of the Respondent vide Detention Order dated

31.12.2004.

1.3 Feeling aggrieved with the said order dated 31.12.2004, the Respondent filed appeal before the Commissioner of Central Excise (Appeals). The

appeal was disposed of vide Order-inAppeal No. IND-I/171/2007 dated 18.09.2007, in allowing the appeal of the Respondent. On being aggrieved

with the above order dated 18.09.2007 passed by the Commissioner (Appeals), the Department has filed the present appeal before this Tribunal on the

following grounds amongst others.

(a) The Commissioner (Appeals) ignored the provisions of Section 11 of the said Act, which empowers the department to make recovery.

(b) The Commissioner (Appeals) did not appreciate the terms & conditions of the MPSIDCâ??s tender for sale of the said recovery.

(c) The Commissioner (Appeals) has not appreciated the fact that MPSIDC and the Respondent cannot suo moto decide and mutually agree upon not

to pay any liability of SECEL.

(d) The provisions which were inserted w.e.f. 10.09.2004 were earlier existed in Rule 230 of the Central Excise Rules, 1944.

(e) In identical matter, in the case of Ashta Industries Ltd., the Commissioner (Appeals), vide Order-in-Appeal No. INDI/174/2007 dated 19.09.2007,

rejected the appeal of the party, but has taken a different view in the present matter.

(f) The Honâ??ble Rajasthan High Courtâ??s judgment delivered in the matter of Macson Marbles Private Ltd. vs. Union of India [2000 (115) ELT

317 (Raj.)] is squarely applicable in the present case.

2. Heard the G.R. Singh, the ld. DR for the Revenue. None appeared for the respondent, despite notice.

3. The provision for recovery of sums due to government is contained in section 11 of the Act, which is extracted here in below:-

SECTION 11. Recovery of sums due to Government. â?

In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules

made thereunder including the amount required to be paid to the credit of the Central Government under Section 11D, the officer

empowered by the [Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to levy

such duty or require the payment of such sums may deduct or require any other Central Excise Officer or a proper officer referred to in

section 142 of the Customs Act, 1962 to deduct the amount so payable from any money owing to the person from whom such sums may be

recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such

other officer, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is

not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to

the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall

proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in

this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the

ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials,

preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may

also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at

the time of such transfer or otherwise disposal or change.]

4. On perusal of the main part of Section 11 ibid, it reveals that the Central Excise officers are empowered to deduct the amount payable under the

statute by the assessee, from the money owing to the person by the Department. Section 11 ibid also mandates that if the amount payable is not

recovered from the assessee, the Central Excise officers will proceed to attach and sell the excisable goods and also to prepare the certificate

proceedings for recovery of the sums due. Issuance of detention order by the adjudicating authority in this case is not in confirmity with Section 11

ibid. Initiation of proceedings for recovery of the government dues from the successor of the business was inserted in the proviso clause appended to

Section 11 ibid vide Section 80 of the Finance(2) Act, 2004 (23 of 2004) w.e.f. 10.09.2004. The embargo created in the proviso to Section 11 ibid will

not have any application to the facts of this case inasmuch as handing over position of assets of the defaulter M/s. AECEL by MPSIDC to the

respondent took place on 12.11.2003 and the sale deed was executed on 22.03.2004, which were prior to insertion the proviso clause to Section 11

ibid. Thus, in my considered view, detention order issued by the Department is not in confirmity with the Central Excise statue. Further, with regard to

the submissions that erstwhile Rule 230 of Central Excise Rule, 1944 provides for issuance of detention order, I am of the view that the said statutory

provisions have no application to the case in hand, for the reason that the said rule is no more in vogue at the material time, when the assets of the

defaulting company was handed over to the respondent.

5. In view of above, I do not find any merits in the appeal filed by the Revenue. Accordingly, the same is dismissed.

(Pronounced in the open court on 01.03.2016)

